FILED
UTAH APPELLATE COURTS
MAY 07 2026

IN THE UTAH COURT OF APPEALS

May 7, 2026

LAUREN R. MARSH
Petitioner

v.

KIRK RUSSEL MARSH
Respondent

20260570-CA
Appellate Court Case Number

254402167
Trial Court Case Number
Fourth District Court, Utah County
Judge Pullan and Commissioner Ito

RESPONSE TO MOTION FOR EXPEDITED REVIEW UNDER UTAH RULES OF APPELLATE PROCEDURE 23C

Of Candice Kulbeth, Appellee

Candice Kulbeth
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Provo, UT 84606
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/s/ Candice Kulbeth
Appellee, *pro se*

I, Candice Kulbeth, a cousin-in-law to Kirk Russel Marsh, assert that I solely own and control the Instagram account @kirkrusselmarsh. As a directly affected party[1] whose constitutional rights in my own content are implicated by orders enforced against another–and whose factual testimony is necessary to correct the record on which the contempt finding rests–I submit this *Response* in support of the *Motion for Expedited Review*.

Background to my involvement in *Marsh v. Marsh*. In October 2022, recently released from federal supervision, Russel came from Virginia to Utah to exercise parent time with his minor daughters at my home. Also in October 2022, Russel had an in-person court hearing in this divorce. As I was concerned for *both* parties, I accompanied Russel to the hearing, against his concerns I would experience discomfort, pain, or stress. The next day, Lauren Zimmer called me. She claimed that Russ had been abusive throughout the duration of their marriage, that seeing in court me was triggering as in 2019 the Marshs tried to prove her an "unfit mother" and expressed concerns with my safety in having him in my home. She cited, as evidence, "abusive" letters Russel had written to her from prison. She said if I read them, I would understand how horrible he truly is. She implored me to consider him dangerous and not allow him in my home.[2]

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[1] Lauren has already testified as to my standing in this case, using my Utah home as a usual place of abode for Russel Marsh and the minor children. *Addendum 2*

[2] As explained in *Addendums 1,2,* Lauren called me again in March, 2025, and asked me to read her *Motion to Enforce* to show how dangerous Russel is. She offered to send me more filings as my "support of Russ facilitates his abuse of her."

I was concerned. I have seven children, and although I had not personally seen evidence that Russel is abusive or manipulative, he had gone to federal prison. If he were truly dangerous, I did not want him in my home, but I did not want to prematurely sever his access to his daughters. I asked Russel *why* he refused to discuss his divorce proceedings– he said that as no one could help him, "sharing his hell" was cruel. I decided to read the letters–eventually choosing to share them on Instagram. *See Addendums 1, 4.*

My Legal Publications In March 2024, Russel filed a federal § 1983; as I read, I was compelled to study the law. In October 2024, the divorce court judge entered Russel's federal § 1983 *Informal Brief of Appeal* into the state divorce docket. Notably, this filing is the only federal filings to address the actions of Bishop W. Christopher Waddell, Lauren's father, and a General Authority of The Church of Jesus Christ of Latter-Day Saints. *Addendum 5, issues 4,5.* From the divorce court stand, Bishop Waddell distorted and mischaracterized truths I hold sacred. As I read the filing, I felt a deep betrayal–but I consoled myself that the filing would provide Bishop Waddell with a framework for the ethical, doctrinal and legal consequences of his actions. Unfortunately, in May 2025, I witnessed Bishop Waddell accompany Lauren to a *Motion to Enforce* hearing in Davis County, further entangling church and state.

In September 2025, I wrote a law review to emotionally cope with the facts of *Marsh v. Marsh.* I titled it "Constitutional Black Holes: An Anti-Delegation Principle for Civil Adjudication" and intended it to stay private. However, the next day, a news release announced

that plaintiffs in a First Amendment religious liberty case–*Gaddy v. COP*– had filed a *Petition for Rehearing en Banc*. Realizing how completely the legal posture meshed with my findings, I was compelled to share my perspective with the Tenth Circuit. In 36 hours, I wrote an amicus brief using *this* case, *Marsh v. Marsh,* to illustrate how each court–state and federal–foreclosed Russel's Right To Petition. It was granted leave. I now have three law review preprints on SSRN, featured by Religion Clause Blog and Legal Theory Blog. Russel was initially unhappy with my scholarship, as he worried "helping him" would endanger me, but was supportive when I expressed my intent was not to "help" but to stand for religious liberty.

Marsh v. Marsh I often think of the book Matilda, in which the Trunchbull has a very small closet called the "Chokey," lined with sharp, protruding objects. No matter which way the unfortunate occupants move, they are jabbed, cut or maimed. Escape lies completely outside their control. *Marsh v. Marsh* is the judicial "Chokey"--no matter how Russel moves, he is injured. On April 15, 2026 I attended another court hearing; I saw Lauren's counsel make no legal argument, but rather engage in unfair and unfounded accusations in open court–Russel's filings are "laughable, nonsense, rogue," nothing more than "Artificial Intelligence." When Russel defended himself against slander, the commissioner warned him against misrepresentations, and recorded the warning into the official record certifying the motion. Counsel and commissioner ensured the judge saw biased and prejudicial information before

even considering the pleading. The legal arguments Russel so carefully articulated were belittled and ignored, his efforts reduced to AI, and his testimony to lies.

The Instagram Account @kirkrusselmarsh In 2023, I created the Instagram account @kirkrusselmarsh. In May 2025, following Lauren's actions seeking contempt on the account contents, I provided Russel with an affidavit of ownership. *Addendum 1.* He refused to use it in his own defense, saying he would not subject me to harm.

As for content, the letters– from Russel to Lauren– were written in the days following Lauren's filing for divorce. *Addendum 4.* Russel–who had been unaware Lauren was contemplating the action–was experiencing shock. Yet the letters contain love, remorse, and pleas for forgiveness–*even if* forgiveness did not alter the dissolution of marriage. There is no content that is belittling, harassing, or "about the divorce"-- Russel had not been served, there was no divorce to discuss. I chose not to remove the content, trusting the judicial process. The truth would set him free. Although Russel provided Lauren a method to contact me–through Instagram direct messaging–Lauren failed to do so. Had she sent the account a DM, I would have affirmed my independent account ownership.

On November 12, 2025, the Fourth District Court commissioner found Russel in contempt for my Instagram account. I took this very hard and very personally. *Addendum 3.* I was devastated for Russel and more fully understood why he doesn't "share his hell." As a First Amendment scholar, it broke my trust in the Rule of Law. I had to make a decision.

First, Russel faces contempt findings on charges entirely outside my control — child support, medical expenses, purge conditions he had no ability to satisfy. Whatever I chose to do with the Instagram account could not change that reality. That freed me to make decisions based upon what is right rather than what will fix the orders. Second, although I felt personally violated, I removed the *content* of the Instagram account to align with the alleged harm. Third, orders require removal of the *account itself* as a purge condition. This is a second level of injury. Why is the ACCOUNT violating the order? There is no defensible justification, and upon this I decided to assert my rights. I changed the profile picture to one of myself, the account biography to the First Amendment, and the account name to Not Kirk Russel Marsh (although it is still @kirkrusselmarsh). This action preserves a marginal sense of my integrity and self-respect. I am disappointed that although Lauren excluded Instagram in her new enforcement action, she did not correct the contempt error in the court. Should this *Motion* be denied, I anticipate Russel's incarceration based upon contempt findings that wrongly mischaracterize and misattribute my independent actions.

Conclusions The First Amendment Petition Clause gives man the inalienable right to petition the government for redress. I exercise my Right to Petition now, for myself, and also because the denial of that Clause creates a Chokey that traps Russel. This Court may be the last holder of keys to let us out. Justice demands it uses them.

/s/ Candice Kulbeth
Provo, UT, May 6, 2026

Addendums

1 - Affidavit of Candice Kulbeth re: Instagram, May 11, 2025

Screenshot: Phone Call from Lauren Zimmer, March 3, 2025

Screenshot: Texts with Lauren Zimmer, March 3, 2025

2 - Affidavit of Candice Kulbeth re: Service of Papers, May 7, 2026

Declaration of Mickala Mahaffey RE Return of Service, January 13, 2025

Constable's Proof of Service, December 28, 2024

3 - Facebook post of Candice Kulbeth, November 12, 2025

4 - Instagram Content: Letter from Russel to Lauren, July 4, 2018

5 - Russel's § 1983 *Informal Brief For Habeas Relief,* October 10, 2024

Certificate of Service
(Appellate Cases)

I certify that on May 7, 2026 a copy of Response to Motion for Expedited Review Under URCP 23C was served on all parties listed here by the method indicated below:

Mailed	Emailed	Hand-delivered	Name	Mailing or Email Address
[ ]	[x]	[ ]	Kirk Russel Marsh	kirkrussel@gmail.com
[ ]	[x]	[ ]	Lauren Zimmer through counsel Kristy Hanson	kristy@mhmlawoffices.com
[ ]	[x]	[ ]	Kirk David Marsh	kirk.d.marsh@gmail.com
[ ]	[x]	[ ]	4th District - Judge Pullan, Commissioner Ito	provofiling@utcourts.gov provoinfo@utcourts.gov
[ ]	[x]	[ ]	Utah Attorney General	dbrown@agutah.gov noticeofclaim@agutah.gov

May 7, 2026
Date

Sign here ► /s/ Candice Kulbeth

Typed or Printed Name Candice Kulbeth

Addendum 1

Affidavit of Candice Kulbeth

I, Candice Kulbeth, submit this affidavit to clarify my involvement with the Instagram account @kirkrusselmarsh and to provide context regarding the letters shared therein. My intent is to ensure transparency and accuracy regarding my actions and motivations.

Background and Relationship to the Parties

I have been married to Jared Kulbeth, Russel's cousin, for 25 years. Jared and I, along with our seven children, reside in Provo, Utah. As part of Russel's parent time in Utah, he and his children have stayed with us on multiple occasions.

My Understanding of the Current Legal Action

In March 2025, Lauren called me concerning a family event I had invited the Marsh children to attend. Lauren immediately began discussing this *Motion to Enforce* and hearing.

Lauren stated that, as she had a constable serve papers to my house, she was sure I was aware of the upcoming *Motion to Enforce* hearing. Lauren said she would be shocked if Russel discussed or sharedlegal proceedings with me - if he did, the filings would remove his mask of kindness, and I would see how ugly, cruel and abusive he really is. She expressed her intent in having her *Motion* served to my house so that I would read it and understand how cruel Russel really is.

I told Lauren that I had looked for evidence of her allegations since October of 2022 (see below), but I have not seen evidence of cruelty or abuse. Lauren said Russ was kind and wonderful the entirety of their marriage, but as soon as he was no longer in control and getting what he wanted, he showed his true self - controlling and abusive.

Lauren stated worry that if I ever upset Russel, I will become a victim to his abuse. I reiterated that I have never seen evidence of Russel exhibiting cruel or abusive behavior, and therefore did not worry. Lauren then said that even *if* he was yet not cruel and abusive to me, he was to her; by supporting him and allowing him to stay with me, I facilitate ongoing abuse of *her*.

Lauren said if I read the legal filings, which she requested I do, I would understand who Russel really is. Lauren stated she would send me her *Motion to Enforce,* so I could understand the extent of his abuse. She offered to send me additional legal filings to ensure I understood her perspective.

Lauren referenced the Instagram account @kirkrusselmarsh, telling me Russel lied in his legal filing as to owning the Instagram account, which she categorized as belittling, harassing and illegal. I was stunned and remained quiet as I was unsure of how to respond, considering I own and have full control of the Instagram account @kirkrusselmarsh.

Lauren then texted me pdf copies of her *Motion to Enforce* as well as her *Affidavit.* She asked me to read the filings and withdraw any support I give Russel. She reiterated that she was happy to share further legal filings to reinforce her position.

The Purpose and Creation of the Instagram Account

In October 2022, I attended a court hearing related to Russel and Lauren's divorce proceedings. My intent was to support both parties, believing that encouragement and fairness should extend to both parents involved. Afterward, Lauren called me and expressed concern that I had been manipulated by Russel and raised allegations of abuse, claiming that Russel had been abusive the entirety of their marriage. She referenced letters Russel had written to her while in prison, describing them as threatening, harassing and belittling. Lauren stated that if I read the letters and legal filings, I would better understand.

I decided to read the letters, and approached them with a critical perspective. Instead of finding evidence of coercion or malice, I found expressions of remorse, faith, and personal growth. I recognized that my personal relationship with Russel could introduce bias, so I sought the perspectives of others, including my friend Cynthia, who found the letters equally moving and helpful in her personal challenges. Cynthia asked to read more of the letters, and desired to share them with her family.

Recognizing their potential to inspire and uplift, I created the Instagram account @kirkrusselmarsh to share these letters. I wrote the byline "*for my girls, that they may always know what's important*" in reference to women for whom I was posting. My intention was not to influence custody proceedings or sway the children's perception of their father. Rather, I aimed to provide a resource for individuals facing struggles in relationships, faith, and personal transformation.

Because I felt the letters were so moving, in December 2024 I put excerpts on my own Facebook profile, omitting any identifying information, as follows:

> I recently read some letters that changed my perspective. They are letters of hope, peace, repentance and forgiveness, of facing fear with faith.
>
> In the spirit of Christmas, which can be a painful time of year, I'd like to share an excerpt, in hopes that it helps you as it helps me. Please feel free to share.
>
> *"I was excommunicated from the Church. As a result, I am not able to enjoy the benefits of Church membership. That does not prevent me from praying to God, our Heavenly Father. It does not preclude Him from communicating with me, as His son. I need Him more than ever. I need Him in every aspect of my life, both now and throughout eternity. I need His guidance and direction.*

I had prayed many times for anger and hatred to be removed, but before Tuesday, that prayer had not been answered. It hurt to have that anger. It hurt to pray, asking for that anger to go away, and for it not to go at all.

So, for me to finally have that anger be removed, I can't explain the relief I felt. I had tried to remove that anger on my own and failed. I could not do it alone. Despite every one of my attempts, I could not do it.

No one other than God could remove the anger I had. It was only through Him I could feel relief. I received relief. Does it make any sense for me to receive relief when I felt my entire life was completely destroyed? Not just a small change in my level of anger, but I received complete removal of that anger and hatred. It is not logical. It is not expected based on the circumstances.

In the depths of anger, pain and being completely broken, I experienced something I have never experienced previously. I went from complete despair to feeling hope. The anger was removed. This happened as I lay in my bed pleading with my Heavenly Father for forgiveness.

I pled with the hope that God would hear my prayers. I pled for hours. I physically pled for hours. By the grace of God alone, I received His love. It is through His love that my anger was taken away. It is through His love that I received relief. I cannot deny. I felt it. I still feel it. I feel it more strongly than any anger I previously felt. I cannot deny. Only our Heavenly Father has that power."

Comments from this post include:

- "Amen! Beautiful!"
- "That is a hard, beautiful experience. I have had my own issue with anger, as someone tried to destroy our family. Sometimes I still feel it rising up and I have to stop it. Giving of myself in service was my answer. Always looking to see the love."
- "Life can be very difficult- grateful for the hope and eventual relief."
- "What a precious woman you are!!! I was excommunicated many years ago because I loved and lived with my now husband mark. After years of being reprimanded and shunned by my branch and LDS friends .my husband is a wonderful friend and soul who has always loved me in words and deed. I went back to church and was Primary president for many years.oh how I loved the kids! Then I became older, wasn't well and my husband developed emphysema. I felt I couldn't leave him alone for the 5 hours I spent going to Church, so I stopped going. Members completely ignored my absence except for one...my best friend. It's been years since I stopped going and no one ever contacted me even now with the death of my brother. I have always been faithful to Heavenly Father, reading my scriptures and praying and He always up lifts me"
- "This is beautiful "

A second Facebook post:

As a child, I focused on Christmas gifts I'd receive. As a young adult, I focused on Christmas gifts I would give. As an old adult, I've tried to focus on the gift Christ gave me.

I recently referred to letters that changed me, and this excerpt touched me:

"I want you to know that I made choices that were wrong. My choices hurt a lot of people. My choices especially hurt you. I am having to feel that pain every day. It hurts. Some days, I can feel hope. Other days, hope seems so far away. I am trying to keep the hope.

I am trying to focus on the good. I am trying to become the husband, father and man God would have me be. I was not perfect when we got married. I am not perfect now. I am trying to one day be perfect. There are times like this where I have failed, but those failures can be overcome or else there is no point in trying. And I am trying. I will continue trying until I get it right. Please don't give up on me."

The gift the baby in the manger gives is the gift of hope, the gift of repentance and the ability to keep trying. The gift I can give is to not give up on myself, or on you. To me, this is the true meaning of Christmas.

Comments from this post:

- This is exactly what I needed to hear today. Thank you Candice
- Candice, IMO you are progressing exactly as Heavenly Father would have you do. Sounds to me like you have repented and continue to repent and in the end you will be made perfect. Well done dear disciple!

Steps Taken to Maintain Objectivity and Avoid Harm

To ensure that the Instagram account remained neutral and beneficial:

1. **Russel's Consent** – Before sharing any letters, I confirmed with Russel that he had no objections to making them public.
2. **Limited Outreach** – I did not actively promote the account or attempt to use it as a platform to influence the children or Lauren.
3. **Content** – The letters focus on themes of forgiveness, personal accountability, and resilience, and do not contain inflammatory or accusatory content.
4. **Non-Interference in Custody Matters** – At no point have I discussed the letters, the Instagram account, or any legal proceedings with Russel's children. I have made a conscious effort to avoid influencing them or introducing conflict into their understanding of their parents' relationship.

Response to Allegations of Harm

Lauren has suggested that the actions in maintaining this account serve to undermine her or to manipulate the children. I want to state unequivocally that is not my intention. I have respected the legal process and have taken deliberate steps to shield the children from unnecessary conflict.

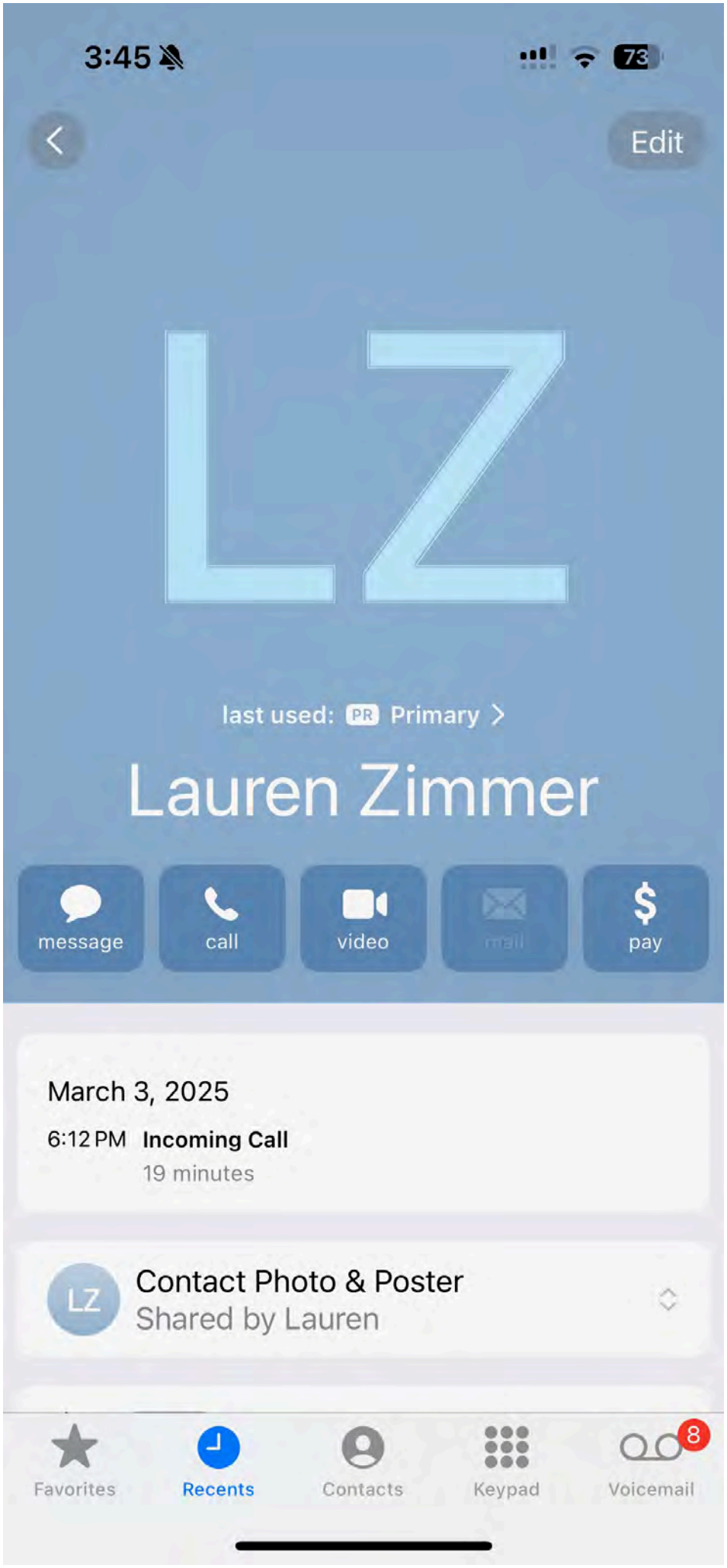
There have been concerns about how legal matters have unfolded, including the incident involving Lauren sending a constable to my home. While this caused significant distress within my household, I have refrained from discussing it with the Marsh children to prevent undue emotional burden. I am thankful that, due to delayed baggage at the airport, the children were spared witnessing a police officer seeking out their Father, which I believe would be particularly traumatic as they previously witnessed their father's arrest. I continually prioritize their well-being and stability.

Conclusion

I submit this affidavit to provide transparency regarding my involvement in this matter. My intention in sharing Russel's letters has been to highlight themes of redemption and growth, not to interfere with legal matters or custody decisions. I trust that the Court will consider my perspective in the broader context of ensuring the well-being of all parties involved, particularly the children.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signed: Candice Kulbeth
Date: May 11, 2025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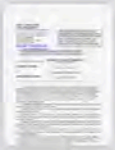
Lauren

Mon, Mar 3 at 5:37 PM

Hi Lauren! Tomorrow Monica is coming to town and we're having a mini Black reunion dinner at my house. I know everyone would love to see the girls. Would that be possible? I'm happy to pick them up and bring them home.

Mon, Mar 3 at 6:37 PM



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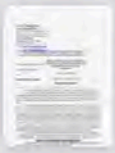

Motion to Enforce - Declaration of Lauren.docx
Word Document · 59 KB

Thanks. Does [redacted] want to come tomorrow?

Mon, Mar 3 at 9:35 PM

Yes, [redacted] would like to come to dinner, and [redacted] would like to come as well.
They both have orthodontist appointments tomorrow at 4:30pm in Lehi. I'm not sure what

+ iMessage

Addendum 2

AFFIDAVIT OF CANDICE KULBETH CONCERNING SERVICE OF PAPERS

I, Candice Kulbeth, write this affidavit at 1 am after having spent today drafting my *Response* to this *Motion to Expedite,* solely because I believe the records of this divorce are woefully incomplete without it; I write as a mother with great love and concern for three beautiful children, the minor daughters of Kirk Russel Marsh.

I have been privileged to host Russel and the girls for his Utah parent time for three and a half years. Over this period, I have been careful–so so careful–so as to not undermine the fragile stability of the girls, including such inane details as indulging their anxieties when I do not pre-wash dishes before loading them into the dishwasher–apparently something very important to their mother, Lauren Zimmer, to an extent where my laxity causes intense anxiety in the Marsh children.

Over the last 3.5 years, my schedule, Russel's schedule, the girls schedule, and Kirk and Shawnee Marsh's schedule has been repeatedly disrupted by Lauren's insistence that Russel does not have "even one minute more than Lauren is legally required to give him" with the children--a sentiment expressed to me, by Lauren, in a courtroom in October, 2022. And as Lauren continually redefines what she 'has to give him' we all must adjust.

On December 28, 2024, I went to the Provo Airport to pick up Russel and the girls. As I pulled into the airport, I got a text from Russel stating they were waiting for their luggage. I parked in the lot to wait. While waiting, I received a phone call from my husband Jared, who was at our home. I could tell immediately that he was upset. Jared told me there was a police officer at our door, attempting to serve Russel papers. I was,

understandably, confused. Jared asked what he should do, and I asked him to tell the officer to come back later that afternoon. We hung up. Jared called me again minutes later, saying that the officer refused to return later. The officer wanted him to accept service on Russel's behalf. I told him to hang on a minute and I called Russel. Russel answered his phone, but could not hear me--they were still waiting for bags and he'd let me know when they were coming out. I hung up and called back Jared–Jared once again asked for instructions. Not knowing what to do, I instructed him to accept service. And then I cried. Hard. I could tell Jared was upset, and I knew my children–who were home–would be upset if Jared was upset. So I sat in my car, sobbing.

Russel texted me, asking me to pull around and pick up the girls. I did so–he walked them to my car, then returned to wait for the luggage. I was still sobbing. One of the children was very concerned and kept asking me why I was so upset, and I could not tell her how *violated* I felt–violated for myself, for Jared who was upset, for my children, for my home, for Russel, and for these three beautiful girls. All I could think to say was "I don't want to tell you and have you be sad too" and one of the children rather forcefully said "then please don't." And I assured her that I would not do that to her.

When Russel finally had the bags–an hour later–we began discussing the fastest place to feed the girls before their 1 pm drop off to Lauren, when the oldest daughter, who had a phone, said "mom just texted me and said she's not planning to get us until 7." For a moment I felt some cognitive dissonance, because Lauren has never given even one extra minute to Russel–and then it hit. The constable. Lauren *wanted* her children–who had witnessed his dramatic arrest by a FBI SWAT team *in their home*– to see their father

interact with law enforcement *in my home.* I prayed I was wrong, but a later legal filing confirmed I was not ("Lauren [ ] knew [Russel]…. would be [at his cousin's home] to return the minor children after the end of his winter break parent time").

When we returned to my home, the emotional state of my family was far worse than I had anticipated. The constable had been aggressive when Jared would only give his first name, accused Jared of actually being Russel, and threatened to arrest Jared for obstructing justice. My own children witnessed this and were distraught. And yet every one of them covered their distress so as not to upset Russel's children. I heard the older children comforting and advising the younger, and I was so very thankful to my children for protecting their cousins.

Months later, Lauren called me–ostensibly about another matter–as written months later in my Instagram affidavit (*addendum A*). Much to my shock, Lauren articulated another motive for this service at my home, one that never occurred to me–that she had hoped, if she had her *Motion to Enforce* served at my house, I would read it to understand who Russel *really* is; because even if I don't think he is abusive, allowing him access to my home is abusive *to HER*.

I, Candice Kulbeth, by sharing my home, allow Kirk Russel Marsh an opportunity to be a father that would otherwise be denied to him. And for Lauren Zimmer, this is an abuse to *her.* And, if I must involve myself in litigation to protect my own rights, I will avail myself of the opportunity to protect the rights of three girls to have access to the parent who stays steady rather than uses them to advance his own agenda.

I swear under the penalty of perjury that this affidavit is true to the best of my knowledge and recollection. /s/ *Candice Kulbeth*, Provo, UT May 7, 2026

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IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR DAVIS COUNTY, STATE OF UTAH, FARMINGTON DEPARTMENT

In the matter of the marriage of: **LAUREN R. MARSH,** and **KIRK RUSSEL MARSH.**	**DECLARATION OF MICKALA MAHAFFEY RE RETURN OF SERVICE** Civil No.: 184701031 Commissioner: Christina Wilson Judge: Michael Edwards

I, Mickala Mahaffey, declare and state as follows:

1. I am an associate attorney and work with Kristy Hanson, counsel for Petitioner Lauren Marsh, at the firm MacArthur, Heder & Metler, PLLC.
2. Respondent, Kirk Russel Marsh, primarily resides in Fairfax, Virginia. However, he frequently spends time in Utah to exercise parent-time with the parties' minor children. Specifically, upon information and belief, Petitioner, Lauren Zimmer (FKA Marsh) knew Respondent to be in the state of Utah on December 28, 2024 to return their minor children after the end of his winter break parent-time. Respondent was temporarily staying at his cousin, Jared Kulbeth's house located [redacted]

3. On December 28, 2024, Constable Fernlund served Respondent's cousin, "Jared" who only provided a first name with the following documents:

a. Order to Attend Hearing
b. Motion to Enforce Order and for Sanctions
c. Declaration of Lauren Marsh Zimmer in Support of Motion to Enforce Order and for Sanctions
d. Rule 1006 Summary of Exhibits for Declaration of Lauren Marsh Zimmer in Support of Motion to Enforce
e. Exhibits 1-18
f. Letter Requesting Mediation

4. Constable Fernlund noted that Jared answered the door, stated that he was not Kirk Russel Marsh. When pressed Jared made a couple phone calls in Constable Fernlund's presence and then stated he would accept service. ***See Proof of Service, Exhibit 1.***

5. On December 31, 2024, Respondent emailed our office stating "I received your request for mediation…" ***See email from Respondent, Exhibit 2.*** Respondent has indicated that he is in receipt of the documents served by Constable Fernlund.

6. While we believe that Respondent has been properly served, we understand the consequences and sanctions associated with a Motion to Enforce. Therefore, in an abundance of caution, the documents were also provided to Respondent on January 13, 2025 via the email address he used to contact our office on December 31, 2024. ***See email to Respondent, Exhibit 3.***

7. Therefore, service of these documents is now complete.

DATED and signed this 13th day of January, 2025.

/s/ Mickala Mahaffey
MICKALA MAHAFFEY

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the law firm of MacArthur, Heder & Metler, PLLC, 4844 North 300 West, Provo, Utah 84604, and that in said capacity and pursuant to Rule 5(b), Utah Rules of Civil Procedure, a true and correct copy of the foregoing document was served upon the following on this 13th day of January, 2025:

PARTY	METHOD OF SERVICE
Kirk Russel Marsh 10036 Glenmere Road Fairfax, VA 22032 kirkrussel@gmail.com *Respondent*	☐ Hand-delivered ☐ U.S. Mail ☐ Fax ☒ E-Mail ☒ Electronic Service via MyCase

/s/ Mickala Mahaffey

24363.25

CONSTABLE'S PROOF OF SERVICE

LAUREN R MARSH

vs

KIRK RUSSELL MARSH

CASE: 184701031

Court Date: 3/17/25

PROCESS: ORDER TO ATTEND HEARIING / MOTION TO ENFORCE ORDER AND FOR SANCTIONS / DECLARATION OF LAUREN MARSH IN SUPPORT OF MOTION TO ENFORCE ORDER AND FOR SANCTIONS / RULE 1006 SUMMARY OF EXHIBITS FOR DECLARATION OF LAUREN MARSH ZIMMER IN SUPPORT OF MOTION / EX 1-18 / LETTER REQUESTING MEDIATION

THE UNDERSIGNED PERSON HEREBY CERTIFIES:

1) I served this process in the manner indicated below.
2) I was at the time of this service a duly qualified and acting peace officer or a person over the age of 18 years.
3) I am not a party to this action.
4) I endorsed the date, and printed my name as rquired by UCA 17-25-6.

I served: KIRK RUSSELL MARSH

Date Served: 12/28/2024, AT 10:24 HOURS

Address of Service: [redacted], PROVO

(X) I left a copy of the process at the dwelling house or usual place of abode of KIRK RUSSELL MARSH with "JARED" WHO ONLY PROVIDED A FIRST NAME.*

a person of suitable age and discretion there residing

ALSO TRIED:

Pursuant to 78b-5-705: I certify under criminal penalty of the State of Utah that the foregoing is true and correct.

Service $20.00

Mileage $15.00

12/28/2024

/s/ ANTHONY FERNLUND, LPI #G100957

Utah County Constable

TOTAL $ $35.00

PAID $

FERNLUND PROCESS SERVICE LLC 95 WEST 100 SOUTH #963 PROVO UT 84603 801 374 8018

*SUMMARY "JARED" ANSWERED THE DOOR, STATED TO THE EFFECT THAT HE IS NOT KIRK RUSSELL MARSH. WHEN PRESSED HE MADE A COUPLE PHONE CALLS IN MY PRESENCE THEN STATED HE WOULD ACCEPT SERVICE.

24363.25

HANSON KL

Addendum 3

11:05

Candice Mason Kulbeth

All Reels Photos Events

Candice Mason Kulbeth
Nov 12, 2025 ·

Today I sat in a courtroom and experienced a devastating violation: a court commissioner ordered "TRUTH IS NOT A DEFENSE TO CONTEMPT" before finding a third party in contempt for MY social media account.

I now must remove my own account - in which I posted letters I found to be beautiful declarations of hope, forgiveness, repentance and redemption - so an innocent party can purge contempt charges impacting his freedom and parental rights.

I cherished the freedom of speech that made this nation sanctified under God.... but apparently that dream ran out of time.

To those who were touched by the letters, who regained hope in fidelity and in eternal atonement and redemption, I am sorry. To those who expect the truth to prevail, I am sorry. To those who expect men to only be punished for their OWN sins, I am sorry.

My conviction is to preserve inalienable rights. I've had a lot to say. I'll have more to say. Please join me.
https://dx.doi.org/10.2139/ssrn.5487286

Home Reels Friends Notifications Profile

11:05

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Addendum 4

 Wednesday July 4, 2018

Lauren,

I am scared to put feelings to paper. Yet, here I go. So today has been an emotional independance day. I am going to start at the beginning. (P.S. please forgive misspellings, poor sentence structure, run on sentences, etc. You know, you have edited my papers before.) I have been struggling with feelings of anger, disappointment, loneliness. I have tried to deal with them by staying busy and doing activities that keep my mind engaged in other things. At night, I don't sleep well. (Not just because the beds are crappy, small and generally uncomfortable) The pain has been beyond my ability to discribe. I have prayed for understanding and not received any answers I have tried to "remain positive" like I often do. I feel like my efforts to "remain positive" are sometimes a defense to hide painful emotions that I do want to or know how to deal with. I am terrified to share painful emotions. I feel vonrable. I feel this way and that makes me feel like I am a burden or like I am whining. I don't feel like that when others share their feelings with me

but the idea of me sharing with others becomes really hard for me. So I have been having a hard time with my emotions. On Sunday, I called like normal to talk to you and the girls. I always love to hear your voices. But the news you told me that you had filed divorce took me to a [redacted] living hell. I felt broken, shattered to pieces. my heart physically hurt. The only way I can describe it is have the wind knocked out of you while having a heart attack and crying. I have never been so alone in my entire life. That feeling continued that night as I lay awake unable to sleep, yet struggling to breath. I was waiting until Monday afternoon for my parents to visit so I could talk to them. I waited at 4:30 for my name to be called to visiting, but nothing. By 5:30 I called them and they explained that the car was registering the engine temprature as high and so, they turned arround so they would not get stranded. They did tell me that they would come up on Wednesday the 4th. With my inability to distract away the pain, I tried to sleep

I have not had a heart attack myself as a good example

I fell asleep sometime after 3am but awoke at 6:30 to the p.a. systems announcements. The pain I was feeling was not gone. I think I might have felt worse but I could not really tell. I was walking around the track unable to find peace or comfort during the days. Lauren, I don't know what I looked like, but it must have been pretty bad because people would come up and ask me if I was okay or if I was sick. This continued throughout the rest of the day. By nine that night I was walking around holding my heart and focusing on breathing. I felt the impression to pick up one of the phones to call you. The first call did not go through. I walked away thinking I am crazy. I am looking for comfort and I am calling you after you tell me you filed for divorce. So I started walking around. I got the clear direction to call you again. Lauren, as I am writing this, I don't know what you are feeling as you read all of this. I hope I am making sense. Anyways, when I called again, you picked up. I was both relieved to hear your voice and scared

because I had no idea what I should say. As I write this I don't remember everything I said but a few things stuck out in my mind. I know I said I need you or needed your help. You said you wanted to help me. (Or something like that, you might remember this better than I do.) You were calm. Lauren, I think it was clear I was not calm. I have always felt I am able to remain calm in stressful situations, but I was not. I felt anxious but somehow better just talking to you. I am sorry, I can't remember all that we talked about but I remember asking the question about the answer you received in the temple. You said you felt like you needed to file divorce papers. I asked if you felt like we should not be together or married or something like that or was it just that you should file divorce papers. You said you felt like you should file divorce papers but the rest you did not know. (Please correct any of my incorrect memories) I know I told you I love you and

at some point the call disconnected. (Lauren, I have been starring at the page for the last 15 minutes wondering if I should keep going. We would always say once you started telling something you had to finish.) After the phone call disconnected, something began happening to me. I went back to my bunk for the 10 pm count. The count was quickly finished and I got into bed. I began praying pleading with God to save our marriage. I plead for forgiveness for me and to truly forgive others. I pleaded for our family. I am just summerizing what went on for 5 hours.+ (There is a midnight count and 3am count and I remember being suppised to realize it was after 3 am) Lauren, for those 5+ hours I cannot explain what happened but I was changed. The feelings of anger melted away. I was able to feel comfort. Even now as I am writing this it's not logical to feel this way, but I do feel this way. I wish you were here to have this conversation face to face. I know you will be here in a month but for some reason, I feel compelled to write this down. I don't know why, maybe

you can tell me because I feel like I communicate the worst through my writing. Lauren, you filing divorce papers and telling me brought on one of the most painful and helpful experience of my life. I know I hurt you. I know I distroyed your trust in me. It pains me to know that I hurt the person I love and need the most in the entire world. The word pains litterly (spelled wrong) for me means bringing a physical pain to me. I hurt for you. You never deserved to be hurt by me. You especially do not deserve any of this. It is beyond reasonable for you to forgive me. And it is beyond reasonable to ask for your forgiveness. Yet, I humbly ask you to forgive me. Please, please forgive me for breaking your trust in me and causing such pain to you. Forgive me for my many weakness. Forgive me for being poor at sharing my feelings. Forgive me for anytime you felt like I was not supportive or supportive enough. Forgive me for times when I made mistakes. Forgive me for times when I disappointed you. Forgive me for the times I was not the best me. Forgive me for all of the times I made jokes thinking they were funny but were not. (I just thought that and decide to write it so if it was not funny

forgive me.) All joking aside, I need you to know how truly and deeply humbled I am to write to you about the things that I feel. You might not feel like forgiving me and I understand why. I hope that you can. I hope you don't feel as if this letter is suppose to right any wrongs I have done. It is not. I am doing this because I feel prompted to. At the beginning I said this was emotional independance day. I am coming to understand how poorly I share my feelings. I want to be better communicating how I feel and overcoming the fear of doing so. Some times I will share my feeling in conversation (although not a lot) but I am truly terrified to write them down as they are permanate and can be shared with others or pulled out days, weeks, or years later and I might be embarrawed what I said or how I wrote something. This is a big step for me. I ask for your patience if it is not clear or completely make sense.

I am scared to receive the divorce papers. I worry that the peace and comfort that I feel might somehow go away. A guy I am friends with went home a month ago

Two months before he left, his wife filed for divorce. He is a few years older than me. He has four children ages 9 to 5, all girls. We would walk a lot together in the evenings and talk. It pained me see him suffering. One of the things he explained to me is that if you are in jail for over a year, then a spouse filing divorce paper does not have to have consent of the other spouse. It effectively is automatic. Knowing this makes me feel as though I don't matter. It would mean that it is solely up to you to decide whether or not you want to be married to me. Based on your filing divorce papers you don't want to be married to me. I still want to be married to you. So I know I will look for even the slightest of hope that we can work things out. I don't know why I asked you about your answer at the temple, but I know I grabbed on to that answer and have been holding on to it ever since. As I plead with God, I kept that answer in my mind. I feel that the hope of saving our marriage and it being the only thing I want allowed me to let go of so many of the feelings that had been dragging me down. The idea of You, me and the girls not being

an eternal family crushed my soul. Only as I focused on saving our marriage and keeping our family together was I able to eliminate all of the negative feelings. It scares me to not know that, for absolute certainity will our marriage be saved, because as I write this the divorce papers that will seperate us are on their way. Despite all of my hoping and praying I can not stop it. It hurts to write those words. Yet somehow I hold on to that small glimmer of hope that maybe, just maybe we can remain married and rebuild our relationship. Lauren, I miss you. You are still the girl of my dreams Sometimes, when I am lucky, you are in my dreams and I am able to spend time with you. I count those moments as special. You mean the world to me. You are my best friend and the mother to our beautiful daughters. As a side note I was showing some of the picture you sent of our family to some of the guys in here. One of the guys made the comment "You and you girl make beautiful children" I thought you would appreciate that. As I was said, you mean so much to me.

It is the idea of you that keeps me positive. Just looking at the pictures of you and the girls gives me hope and a future to look forward to after I leave here. I am grateful for that hope.. I also have a confession, I am converted to having pictures of even the smallest of things. Oh, I am sorry for even time I was a pain about taking pictures. Please forgive me for my bad attitude, rolling of eyes, or any other bad or less than supportive behavior when you would try to take pictures. I was wrong. Please don't give me too much greif for admitting this.. You bring joy to my life. I remember on night sitting on the balcony of the Condo on Chanuk Place before I met you. I sat alone and realized how sad life is without someone to share it with. The saddness can only be replaced when you are with someone you love. Lauren, you are that person who brings me joy. (I am sorry this is turning in to a love letter. In my defense I did recently watch "The Notebook" (which was an odd experience in Prison). It is strange how writing these things down trigger so many memories. I am guessing

this is not news to you being that you are a writer. Despite the writing being suprisingly positive. I wish I could be with you in person. I miss you so much. I miss the girls. I miss putting them to bed. I miss just talking to you. Lauren, I am grateful I was prompted to call you yesterday. I hope you enjoyed the concert with the girls. Thank you for taking my call, it saved me more than I can possibly express. I love you and miss you,

Love

Russ

Addendum 5

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INFORMAL BRIEF FOR HABEAS AND SECTION 2255 CASES

Re:

1. **Declaration of Inmate Filing** (for inmates relying on deposit of notice of appeal in institution's internal mail system to establish timeliness of notice of appeal)
An inmate's notice of appeal is timely if it was deposited in the institution's internal mail system, with postage prepaid, on or before the last day for filing. Timely filing may be shown by:
   - a postmark or date stamp showing that the notice of appeal was timely deposited in the institution's internal mail system, with postage prepaid, or
   - a declaration of the inmate, under penalty of perjury, of the date on which the notice of appeal was deposited in the institution's internal mail system with postage prepaid. To include a declaration of inmate filing as part of your informal brief, complete and sign the declaration below:

Declaration of Inmate Filing

I am an inmate confined in an institution. I deposited my notice of appeal in the institution's internal mail system on N/A [insert date]. First-class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Signature: N/A Date: N/A

2. **Jurisdiction**
Name of the court or agency from which you are appealing:
4th Circut District Court
Dates of the order or orders for which review is sought:
September 13, 2024

3. **Certificate of Appealability**
Did the district court grant a certificate of appealability?
☐ Yes ☑ No

If Yes, do you want the Court of Appeals to review additional issues that were not certified for review by the district court?
☐ Yes ☑ No

If Yes, **you must** list below the issues you wish to add to the certificate of appealability issued by the district court. If you do not list additional issues, the Court will limit its review to those issues on which the district court granted the certificate.

n/A

4. **Issues on Appeal**

Use the following spaces to set forth the facts and argument in support of the issues you wish the Court to consider on appeal. You must include any issue you wish the Court to consider, regardless of whether the district court granted a certificate of appealability as to that issue. You may cite case law, but citations are not required.

Issue 1.

See Attached

Supporting Facts and Argument.

Issue 2.

See Attached

Supporting Facts and Argument.

5. **Relief Requested**
Identify the precise action you want the Court of Appeals to take:

See Attached

6. **Prior appeals (for appellants only)**

A. Have you filed other appeals in this court?

☑ Yes ☐ No

B. If you checked YES, what are the case names and docket numbers for those appeals and what was the ultimate disposition of each?

See Attached

Kirk Russel Marsh

Signature

[Notarization Not Required]

Kirk Russel Marsh Shawnee B. Marsh Kirk D. Marsh

[Please Print Your Name Here]

CERTIFICATE OF SERVICE

****

I certify that on Oct 10, 2024 I served a copy of this Informal Brief on all parties, addressed as shown below:

Dana Emmons
411 Eagle Ridge Drive
Saint Peters MO, 63376

Michael Edwards
electronic service

State of Utah
electronic service

Kirk Russel Marsh

Signature

NO STAPLES, TAPE OR BINDING PLEASE

INFORMAL BRIEF IN SUPPORT OF § 1983 CIVIL RIGHTS VIOLATIONS AND EMERGENCY APPEAL FOR HABEAS RELIEF

On September 13, 2024 the Fourth District Court ordered on *Marsh v. State of Utah et al:*

> *The Court thus lacks subject-matter jurisdiction over Plaintiff's claims. Accordingly it is hereby*
>
> ***ORDERED** Defendants' Motion to Dismiss is **GRANTED***
>
> ***ORDERED** that Plaintiff's Complaint is **DISMISSED without prejudice***
>
> ***ORDERED** that Plaintiff's "Motion for Ruling of Plea for Injunction for Habeas Relief and Waiver of Oral Arguments" is **DENIED as moot***

In his filings, Plaintiff Kirk Russel Marsh ('Russel') gave clear legal arguments against Defendant's *Rooker-Feldman* defense. Russel's arguments were not addressed in the district Court's orders. The district Court incorrectly dismissed as moot a plea for habeas relief of a federal statute violation (giving the plea status as federal question with federal subject-matter jurisdiction). The district Court ignored a filing from Kirk and Shawnee Marsh as third party beneficiaries, or alternately, as added plaintiffs. The district court dismissed claims against Dana Emmons, the court-ordered reunification therapist, which must be based upon presumption she is a state actor. As bias and violations of due process in the state-court prohibit Russel from obtaining fair and full justice, *Rooker-Feldman* cannot be invoked.

The district Court oversimplified the Complaint by ignoring many aspects (as outlined below), while at the same time claiming the Complaint is too intertwined. In this way she justifies dismissing the entire Complaint. Whether or not the district Court understands the complexities of Russel's argument and situation, she didn't address Russel's arguments nor his legal position.

The district Court's order violates due process, further endangering both Russel's freedom and the rights and needs of Russel's minor children. Judge Edwards' state court order on child support violated Russel's constitutional rights, but also entrapped Russel into violating Federal Law 18 USC § 228 - Failure to pay legal child support obligations. Russel's current child support arrearages exceed the threshold for federal criminal action, subjecting him to imminent federal felony criminal charges and incarceration, as repeatedly threatened by the minor children's mother (Lauren).

Thus, Plaintiff Kirk Russel Marsh respectfully prays for an expedited response from this Court regarding relief as addressed below, to best address the forthcoming illegal loss of Russel's freedom, as well as to restore the rights of his children.

ISSUE 1 - HABEAS RELIEF

The district Court's ruling is "*ORDERED that Plaintiff's Motion for Ruling of Plea for Injunction for Habeas Relief is DENIED as moot."* Had the state-court ruled by following Utah statutes, either initially or in Russel's *Petition to Modify Child Support,* then Habeas Relief would be moot. However, the state-court summarily dismissed Russel's *Petition to Modify Child Support* for invalid reasons, thus refusing to address the continuing violations to Russel's rights of due process that will lead to his incarceration. Therefore, the motion is not moot, but is rather relevant and emergent.

As habeas relief as per 28 USC § 2254 is an explicit exception to *Rooker-Feldman*, habeas relief cannot be moot and the Complaint was unjustly dismissed.

In the 2019 state-court divorce trial, Judge Edwards awarded the entirety of the couple's assets to Lauren. At the time of the trial, Russel was incarcerated with 4 years of his sentence remaining.

Although Judge Edwards, in his statements of fact, found "the Court finds that the respondent does not currently have the income or the assets to pay alimony" Edwards then ordered Russel to pay $700 per month base child support, plus half of medical and childcare costs, thus creating an obligation Russel could never pay himself. Edwards, knowing Russel's parents had been gifting Lauren monthly support payments of $700, ruled accordingly, while stating as fact Russel himself had no ability to pay. This ruling illegally coerced his parents, not parties to the suit, to pay the support payments. Russel's parents had already refused to be legally, personally obligated to make child support payments (see Issue 2).

In Edwards 2019 ruling, he stated " I want my order to comply with all statutes… I think the respondent needs to pay for this given the fact that it's necessary because of what he's done… respondent is to pay child support to petitioner using a sole physical custody calculation. Now, under the low income calculation, respondent would only pay $30 per month for child support. Given the facts of the case, the reason for the respondents lack of earnings, his own fault, his own criminal conduct, the needs of the parties minor children for support, the Court finds that it is justified in deviating from the guidelines in ordering respondent to pay petitioner child support in the amount of $700 per month in base child support. This is a deviated order, and it's deviated simply because it would be inequitable to the parties' children to order $30 per month support when their father is in prison because he committed a criminal act."

Although Edwards cites justification for deviation as creating equity for the children, and that Russel's crimes needed further punishment, Judge Edwards was aware Russel had no assets nor income, and could not obtain either for *years* as Russel was incarcerated. This created judicial entrapment, forcing Russel to commit a federal crime - criminal nonsupport - by no action of his own and with no ability, himself, to prevent the crime from occuring.

Russel's arrearages currently are, at minimum $15,000, but (depending upon how the Court views support payments made by Russel's parents) could be in excess of $60,000, either number putting him at risk for arrest for felony criminal nonsupport charges, with an accompanying prison sentence of up to five years. Although Russel submitted a *Petition to Modify Child Support* to the state-court to address this ruling and arrearages, the petition was wrongfully dismissed by the state (see Issue 3). Additionally, Russel's parents rights were violated in the state-court judgment, and the state-court does not have a remedy to nonparties (see Issue 2).

Because Russel cannot achieve fair litigation in the state-court, his only option is federal collateral relief via habeas filing and a 1983 civil rights lawsuit for damages. In *The United States of America v. Kirk Russel Marsh,* GREGORY, Chief Judge, concurring in part, dissenting in part, and dissenting in the judgment, said "Because I doubt that the drafters of the relevant procedural rules at play in this case intended them to be read in a way that is more forgiving to judges than criminal defendants—the people least able to protect themselves in our justice system—I must respectfully dissent."[1]

"If it is well known that if a court lacks jurisdiction to hear an appeal, then it should come as no surprise that a skilled litigant will forego the process of filing a direct appeal and instead seek habeas relief—a court cannot provide a remedy when it is not in its power to do so… It is well known that petitioners seeking collateral relief have to clear a higher hurdle than on direct appeal. And the Supreme Court has long recognized that "[t]hose whose right to appeal has been frustrated should be treated exactly like any other appellants; they should not be given an additional hurdle to clear just because their rights were violated at some earlier stage in the proceedings." *Rodriquez v. United States*, 395 U.S. 327, 330 (1969); *see also Frady*, 456 U.S. at

[1] T*he United States of America v. Kirk Russel Marsh,* No. 18-4609, December 9, 2019

165 ("a collateral challenge may not do service for an appeal") Limiting relief of a Criminal Rule 32(j) error to a habeas petition would place an undue burden on defendants who are only in that position because of a trial judge's mistake. And what makes matters worse is that petitioners may have to climb these hurdles without the assistance of counsel. *See Pennsylvania v. Finley*, 481 U.S. 551, 555–56 (1987)."[2]

Judge Edwards' wrongful ruling created the judicial entrapment situation under which Russel will be imprisoned; that Russel has not *yet* been arrested should not preclude him from seeking prospective relief against an illegal arrest resulting from violations of due process. As per *Ex Parte Edward T Young,* the Supreme Court determined that it would be unfair to require challengers of a law to wait until they faced a harsh sanction before they could bring any kind of action questioning the validity of that law. Therefore, a litigant does not have to wait until the bad action to seek relief; however relief cannot be obtained in a biased state court where the judgment was brought in bad faith, and request for modification was improperly dismissed. This problem has been compounded by the district Court, where, by dismissing the Complaint, the district Court created a situation where Russel is denied relief from state, federal and constitutional violations in both state *and* federal court.

[2] T*he United States of America v. Kirk Russel Marsh,* No. 18-4609, December 9, 2019

ISSUE 2 - APPLICABILITY OF ROOKER-FELDMAN TO STATE-COURT NONPARTIES

The *Rooker-Feldman doctrine* does not bar actions by nonparties to the earlier state-court judgment simply because, for purposes of preclusion law, they could be considered in privity with a party to the judgment.[3]

In Russel's 2019 state-court divorce trial ruling Edwards stated "(Kirk and Shawnee Marsh) convinced the Court that they have the best interests of the children at heart and *will comply with Court orders*." Judge Edwards was very specific in his direct order naming Russel's parents, Kirk and Shawnee (Virginia residents) to pay for all court-ordered travel for the minor children (for travel from Utah to Virginia). Edwards ordered "respondents parents are to facilitate respondent's parent time by providing the transportation, care, housing, and supervision of the children for these parent-time periods."

In addition to directly ordering travel expenses, and despite Kirk's previous refusal to be legally obligated to payments, Edwards ordered a child support obligation of $700 per month; the amount is based upon testimony that Kirk Marsh had gifted Lauren $700/month for the previous 18 months. Edwards deviated from statutes in his ruling, as "(Russel's lack of income) is his own fault, his own criminal conduct" and "following statutes would be inequitable to the children," as justification to rule outside rebuttal guidelines against a third party.

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[3] Lance v. Dennis, 379 F. Supp. 2d 1117, 1125 (D. Colo. 2005), 126 S. Ct. at 1202 (citation and footnote omitted) (quoting Exxon Mobil, 544 U.S. at 291).

Based on her financial declaration to the court at trial, Lauren had cash in the bank well exceeding $100,000, a home of her own (fully paid for by her parents with no mortgage or rent expense), and employment (from her father at The Office of the Presiding Bishopric of The Church of Jesus Christ of Latter Day Saints). Thus, as her home was freely provided, her income was sufficient, and she had a large savings account from the marital assets, the judge knew the children's financial needs were already being met.

This $700 per month child support order was a punitive order against Russel as well as Kirk and Shawnee Marsh, illegally ordered to punish Russel for his actions and Kirk and Shawnee for their support of Russel, as directed and explained by Lauren's father in his testimony (described below in Issue 4). In addition to lacking jurisdiction over a non-party to the suit, Edwards lacked jurisdiction in that he issued punitive damages to Russel, Kirk and Shawnee Marsh over which he had no jurisdiction. Edwards confirmed his knowledge that his actions were punitive and outside of his jurisdiction in his subsequent rulings.[4]

In December 2023, Lauren would not release the children for their flight to Virginia for Russel's parent time, as she was demanding Russel first acquiesce to shortening his summer parent time to accommodate Lauren's vacation plans. As a result, Kirk spent $1000 changing the children's plane tickets, having already spent over $4000 on the tickets themselves. As Kirk had many times previously paid for costly ticket changes when Lauren used the children as ransom, Kirk and Shawnee decided Lauren's behavior had gone too far and discontinued support payments. However, as Kirk and Shawnee still comply with all court orders directly against himself, he continues to pay for the children's travel between Utah and Virginia - an ongoing violation of his constitutional rights.

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[4] Russel Response Opposing Defendant's Motion to Dismiss, 5/13/2024 pp. 20-21

In March 2024, Russel filed a *Petition to Modify Child Support* in state-court, seeking to modify current and retroactive child support orders to follow Utah statutes. Although on May 20, 2024 Defendants claimed "the state proceeding would also provide vehicles for Marsh's constitutional claims to be heard," their actions then proved this is not true.The *Petition* was wrongfully dismissed in August 2024. Lauren now threatens Russel and the minor children with enforcement of criminal nonsupport, resulting in Russel's impending incarceration.

In dismissing the federal Complaint in its entirety, the district Court dismissed a *Brief in Support,* filed by Kirk and Shawnee Marsh, nonparties to the underlying state-court proceedings. In their brief, Kirk and Shawnee Marsh asked to be named as Plaintiffs in the federal Complaint. Kirk and Shawnee's plea for prospective injunctive relief is exclusive to federal jurisdiction: Kirk and Shawnee are court ordered to pay for future travel by a court in which they have no standing to appeal.

A §1983 lawsuit against a judicial officer is appropriate when "appeal is not a viable course of action at all: nonparties, after all, have no right of appeal."[5] Thus, as Kirk and Shawnee's rights cannot be remedied in a state court where they have no standing, the Complaint must proceed in federal court on their behalf. For Kirk and Shawnee to file a federal Complaint separate from Russel, when the district Court has already ruled that Kirk and Shawnee's claims are 'inextricably intertwined' with Russels, would be disrespectful to the district Court.

Rooker-Feldman cannot be invoked because Kirk and Shawnee cannot be dismissed via *Rooker-Feldman:* as third parties to the state court judgment, *Rooker-Feldman* cannot be invoked against them. At minimum, the district Court does not lack subject-matter jurisdiction over violations against Kirk and Shawnee Marsh.

[5] Harvard Law Review - Judicial Immunity at the (second) founding: a new perspective on 1983.

Defendants argued "joining Marsh's parents as plaintiffs would be futile, as Judge Edwards would still retain absolute judicial immunity."[6] As district Court ruled violations against Kirk and Shawnee Marsh are 'inextricably intertwined' with the case, and as Judge Edwards had no jurisdiction over Kirk and Shawnee Marsh in the state court proceedings, Judge Edwards ***cannot*** have judicial immunity in the Complaint. Edwards issued rulings in which he is in clear absence of jurisdiction: he lacked jurisdiction to issue punitive damages for criminal actions, both in the awarding of damages, and by punishing already adjudicated criminal activity. Edwards illegal punitive rulings violated Russel, a party to the suit, and Kirk and Shawnee, nonparties to the suit. Additionally, as Kirk and Shawnee are residents of Virginia, Utah courts lack personal jurisdiction over them.

This would extend Edwards' absence of judicial immunity to *all* aspects of an 'inextricably intertwined' case.

The Defendants acknowledged "absolute judicial immunity is not a bar to prospective injunctive relief."[7] An order of prospective injunctive relief, and a remand of this Complaint to district Court, is the only way to halt continuing violations against Kirk, Shawnee, and Russel Marsh and address damages. Further litigation of the Complaint should not be dismissed due to the defendant's immunity defense.

Defendants state "Because Judge Edwards actions were not taken in clear absence of jurisdiction, Judge Edwards is entitled to absolute judicial immunity for claims against monetary damages." Kirk and Shawnee argue that Edwards' actions were in very clear absence of jurisdiction, and appreciates Edwards concurrence that an order finding him in violation of jurisdiction will strip

[6] Reply Supporting Defendants Judge Edwards and the State of Utah's Motion to Dismiss, 5/20/2024 p.4
[7] Reply Supporting Defendants Judge Edwards and the State of Utah's Motion to Dismiss, 5/20/2024 p.4

him of immunity. Again, in the course of his rulings, Edwards himself acknowledged when he *was* or *was not* ordering punitive damages to further punish Russel (or his parents) for Russel's crimes.[8]

The Court's order states "*constitutional claims that are 'inextricably intertwined with' questions ruled upon by a state court, as when success of the federal claim depends upon a determination 'that the state court wrongly decided the issues before it.' The Court thus lacks subject-matter jurisdiction over Plaintiff's claims. Accordingly. It is hereby* ***ORDERED*** *that Plaintiff's Complaint is* ***DISMISSED without prejudice."***

The district Court dismissed the case in its entirety without addressing Kirk and Shawnee Marsh and ruled that *all* claims are 'inextricably intertwined' with Russel's Complaint. Thus, by dismissing the complaint in its entirety, the district Court either added Kirk and Shawnee Marsh to the Complaint and failed to recognize their non-party status in the state court case, or incorrectly failed to exclude them from the dismissal and continue the Complaint on their behalf.

"Exxon Mobil by itself seemed to call into question the Eighth Circuit's application of *Rooker-Feldman* in *Lemonds v. St. Louis County* to those who were not parties to prior state-court litigation. The Court emphasized that the doctrine was limited to cases involving federal-court suits brought by "state-court losers" and, as in both *Rooker* and *Feldman*, "the losing party in state court." Most recently, the Court in *Lance v. Dennis* has made clearer just how sharply it meant to limit the doctrine: a federal-court plaintiff not a party to prior state-court litigation is not

[8] Russel Response Opposing Defendant's Motion to Dismiss, 5/13/2024 pp. 20-21

to be held barred by *Rooker-Feldman* just because preclusion law would have found the federal plaintiff in privity with the state-court loser."[9]

ISSUE 3 - ROOKER-FELDMAN

In its order, the district Court cites *Cole V Cole* in that "district courts have no original diversity jurisdiction to grant a divorce, to award alimony, to determine child custody, or to decree visitation." Russel reminds this Court that his Complaint did not ask for relief in granting a divorce, awarding alimony, determining child custody, or decree visitation. Russel merely asked the district Court for an prospective injunction against a biased ruling brought in bad faith, which then resulted in, and continues to result in, constitutional violations and violations of federal law.

Upon federal vacatur of the State's order, it is the responsibility of the state court to appropriately re-rule according to their own statutes. Had the state addressed this issue of their own accord, the prospective injunctive relief request would be moot. However, the State failed to rule appropriately in its initial ruling, and failed to act upon Russel's *Petition to Modify Child Support,* therefore the request for injunctive relief is appropriate.

The Court ruled "*The Fourth Circuit has made clear that when a plaintiff's claims are "inextricably intertwined" with the merits of state-court judgments, a district court should decline jurisdiction under the Rooker-Feldman doctrine."* However, even if there were no issues of habeas relief or of third parties, this case would still not invoke *Rooker-Feldman,* as outlined below.

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[9] "INEXTRICABLY INTERTWINED" EXPLICABLE AT LAST? ROOKER-FELDMAN ANALYSIS AFTER THE SUPREME COURT'S EXXON MOBIL DECISION" By Thomas D. Rowe, Jr., and Edward L. Baskauskas" pg 18 https://www.fclr.org/fclr/articles/html/2006/fedctslrev1.pdf

"In our view, anyone who now starts with the phrase 'inextricably intertwined' in determining whether the doctrine applies either hasn't read Exxon Mobil or hasn't read it right."[10]

But we do suggest that "inextricably intertwined" can come into play only in a case that may involve partial applicability of Rooker-Feldman. In some instances, direct application of the Exxon Mobil Court's formulation may lead to the conclusion that Rooker-Feldman is not applicable at all, despite some state-court adjudication.

At the very least, *ExxonMobil* should make *Rooker-Feldman* inapplicable when the federal-court plaintiff had no full and fair opportunity to litigate its federal claim in state court, as lower federal courts before and since *ExxonMobil* have held."[11]

Several points here:

In Defendents' *motion to dismiss,* dated April 24, 2024, the defendants mislead the district Court by stating "Marsh's claims are inextricably intertwined with the state court's decisions and to adjudicate his claims would involve this Court in relitigating the family law issues." The defendants' claim is a purposefully misleading attempt to invoke Rooker-Feldman; although Russel asks for vacatur of a divorce judgment, he does not request the federal court re-litigate or re-rule on the state-court judgment. Rather, his petition for habeas relief is an injunction against a second action (continuing and prospective federal and constitutional violations against Russel,

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[10] See,e.g.,Ramos V.Nebraska,396F.Supp.2d1053,1061 (D.Neb.2005) (citing ExxonMobil and continuing, "The [Rooker-Feldman] doctrine . . . precludes federal district court jurisdiction over federal claims that are 'inextricably intertwined' with claims of the state court action.").

[11] "INEXTRICABLY INTERTWINED" EXPLICABLE AT LAST? ROOKER-FELDMAN ANALYSIS AFTER THE SUPREME COURT'S EXXON MOBIL DECISION" By Thomas D. Rowe, Jr., and Edward L. Baskauskas" pg 18 https://www.fclr.org/fclr/articles/html/2006/fedctslrev1.pdf

i.e. criminal entrapment committed by Judge Edwards, among other charges) which was committed as a result of the first action (the supplemental divorce judgment of August 16, 2019).

Additionally, in their April 2024 motion, the Defendants failed to acknowledge that Russel had requested state-court litigation on the issues, and that the state-court had refused to do so. As Russel argued in his May 13, 2024 motion, the Supreme Court ruled in *Lapidis v. Board of Regents of University System of Georgia,* the state voluntarily waives at least part of its Eleventh Amendment Immunity when it invokes a federal court's removal jurisdiction.

In this case, the state refused to address the claims at state level. Thus this Court can reasonably find that the move from state to federal court is voluntary by the Defendants, given their unwillingness to litigate the claims in their own court. Defendant's violation of due process against Plaintiffs continued even after the commencement of federal litigation - Defendants illegally dismissed state action in August 2024.

If this were truly a state matter, and the federal Court truly lacked subject-matter jurisdiction, the distinct Court would have, by law, remanded this Complaint to the state-court, as per 28 U.S. Code § 1447(c). She failed to do so, which seems to further show that her ruling lacked legal foundation.

As Russel filed the initial Complaint on behalf of himself and his parents, the Defendants argued that Kirk and Shawnee are capable of defending their own interests.[12] Kirk and Shawnee then, as per the defendants suggestion, submitted a brief to the Court requesting to be added as Plaintiffs. It appears federal subject-matter jurisdiction was thus confirmed by the Defendants: Defendants

[12] Memorandum Supporting Judge Edwards and the State of Utah's Motion to Dismiss, 4/24/2024 p.15

agreed to the necessity of adding Plaintiffs to the Complaint over which the state had no jurisdiction as per 28 U.S. Code § 1447(e).

Given various aspects of the claims (diversity of citizenship, Plaintiff alleges claims under federal law, Kirk and Shawnee lack standing to litigate for themselves in state-court, among others), the federal court's established subject-matter jurisdiction was only strengthened by Defendants voluntary removal to federal court.

The prospective injunctive vacatur of the state-court judgment should be given by this Appellate Court, as Russel has had no fair or full opportunity to litigate his claim in federal court, nor in state court.

The state court ignores ample opportunity to correct the state-court judgment; had state court done so, or will now do so, Russel would no longer seek projective injunctive relief through federal court. His Complaint would then be limited to damages.

The state-court's refusal to litigate an unjust and illegal state-court judgment in their own court appears to be, in part, an effort of the Defendants to invoke *Rooker-Feldman* to quash a §1983 lawsuit for damages.

This was evidenced in August 2024, when the state-court dismissed Russel's *Petition to Modify Child Support,* stating "*Based on a review of this file and Rule 4(b) Utah Rules of Civil Procedure, the Court orders the Petition to Modify in this case be dismissed for failure to serve the defendant within 120 days of filing the petition."*[13]

[13] Memorandum in Support of Motion for Ruling, August 26, 2024 pp. 1-2

This dismissal is emblematic on multiple levels. All parties were served with the *Petition* on March 29, 2024. The "unserved" party, Russel, is also the filer of the petition, and was served his own petition by the Court. Additionally in this August 2024 ruling, Judge Edwards refers to Russel as the "defendant," which, as this Court is well aware, is a party to a civil or criminal proceeding, but not a party to family court (in Utah, family court parties are either a petitioner or respondent). As Edwards has repeatedly referred to Russel's criminal actions, this ruling reflects the state's ongoing prejudice and unwillingness to litigate the violations in state court.

ISSUE 4 - BIAS AND UNDUE INFLUENCE IN STATE COURT

That the state-court allows bias and undue influence to prejudice the court against allowing Russel's fair and full opportunity to litigate in state court is an explicit exception that overcomes invoking *Rooker-Feldman Doctrine.* Thus, the federal court has subject-matter jurisdiction over the full Complaint.

This undue influence led Judge Edwards to abandon Utah laws and statutes by awarding child support in excess of the Utah guidelines (creating the judicial entrapment that threatens Russel's freedom), ordering Kirk and Shawnee, nonparties, to financial obligations (for travel and accommodations without their consent), and ordering Russel to subject to reunification therapy with the children (despite Edwards' acknowledgement that the children's hesitation to spend time with Russel stemmed from Lauren's anxieties and not their relationship with Russel).

There are many examples of rampant bias and undue influence throughout the Marsh state-court proceedings. This was explained in the initial Complaint, however the district Court dismissed the Complaint before giving Russel a fair and full opportunity to litigate the facts. As such, in

order to illustrate the gravity of bias, Russel will give an explanation below, and will provide evidence in discovery proceedings, and will further prove the facts in trial.

Defendant Judge Michael Edwards is a graduate, both of undergraduate studies and the law, from Brigham Young University, a school owned, operated and utilized by The Church of Jesus Christ of Latter Day Saints (the Church). As a member of the Church, Judge Edwards twice yearly sustains 'general authorities' of the Church as prophets, seers and revelators.

The Church teaches that to sustain church leaders "means that we stand behind them, pray for them, accept assignments and callings from them, obey their counsel, and refrain from criticizing them."[14]

The Church has assets in the hundreds of billions of dollars, which are controlled and distributed by 'general authorities' known as the Presiding Bishopric. "The Presiding Bishopric is a council of three men who work under the direction of the First Presidency. They manage such matters as humanitarian aid, welfare programs, tithing and fast offerings, physical facilities, and the organization of membership records, among others. They also travel frequently to minister to Church members around the world."[15]

Bishop W. Christopher Waddell has held a position in the Presiding Bishopric since October 2015. In his duties, and with a finance background, Waddell manages the Church's finances and property. Waddell acts as an authorized spokesperson on behalf of the Church, including issuing public statements to outlets, such as the Wall Street Journal and CBS's 60 Minutes, concerning the Church's finances and adherence to the law.

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[14] "What does it mean to sustain my Church leaders?" https://www.churchofjesuschrist.org/study/youth/learn/yw/priesthood-keys/honor?lang=eng

[15] Presiding Bishopric, https://www.churchofjesuschrist.org/learn/presiding-bishopric?lang=eng

Waddell also gives direction directly to members of the Church through semi-annual speaking engagements via worldwide general conference, as well as frequent smaller speaking engagements. As a member of the Presiding Bishopric, he speaks with the power, authority and authorization of the Church in regards to interpretation of religious beliefs, finances, and adherence to the law, among other topics. Waddell's power, authority and authorization is not limited to speaking assignments, but is available to him in any avenue in which he exercises an ecclesiastical function or statement.

On August 15, 2019, Bishop W. Christopher Waddell took the stand in Judge Michael Edwards' courtroom to testify in the divorce trial of his daughter, Lauren. In his testimony, Waddell initially said he's "Bishop at Church but not here." However, minutes later, Waddell retracted this stance when he said,

> "In my background, ecclesiastically, I've been involved in a lot of people that have been involved in a lot of serious situations, and I've seen the difference between recognition and lack of recognition, and that's one of my concerns (about Russ). And my hope is that one day Russ will recognize the seriousness of what he's done and not the 'mistakes which got him torn away from the family.' He doesn't recognize it. Misplaced behavior isn't an indication of recognition of what has taken place."[16]

Waddell, using his position as a 'general authority,' testified to the Church's perspective of Russel; Waddell directed the members of the Church in the courtroom, specifically Judge Edwards, to condemn Russel, Kirk and Shawnee. Waddell testified to Judge Edwards,

[16] Trial audio transcript of Chris Waddell's testimony, August 18, 2019.

> "The fact that Russ didn't abuse his children, the fact that he was kind to them and played with them, the fact that he was kind to Lauren, and that doesn't necessarily, *by your definition,* by the Marsh's definition, by our definition, by Russ's definition *of our faith's belief*, the Proclamation to the World[17] regarding the family clearly states a father's responsibility, amongst other things, to teach them to be law-abiding citizens, to raise them in righteousness, to preside, to protect and provide. All of that is part of being a good father. You have to do more than just be a kind person."[18]

Waddell testified "It's offensive to me that (Russ) refers to mistakes" and that Church members who are forgiven for mistakes "aren't in federal prison for federal crimes."[19]

Waddell stated that by supporting Russel, Kirk and Shawnee Marsh "don't understand and are playing into Russ." Waddell then says he for fears anyone who supports or believes Russ, going so far as to say to the Court "If (Kirk and Shawnee Marsh) would accept responsibility, … if they would work *with us* in trying to resolve the situation" they could earn the trust of Chris Waddell, and therefore the Church, again.[20]

Waddell testified, as a general authority, that Kirk and Shawnee needed to accept responsibility for Russel's actions. The next day in his ruling, Judge Edwards mirrored Waddell's testimony. Edwards cited his own ecclesiastical experiences before saying "You'll find that I'm narrowly tailoring this so that it won't be unduly burdensome or problematic for the petitioner (Lauren)."[21]

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[17] LDS doctrine, https://www.churchofjesuschrist.org/study/scriptures/the-family-a-proclamation-to-the-world/the-family-a-proclamation-to-the-world?lang=eng
[18] Trial audio transcript of Chris Waddell's testimony, August 18, 2019.
[19] ibid
[20] ibid
[21] Transcript for Hearing of 08-16-2019

Judge Edwards then ordered Kirk and Shawnee pay for all travel for court-ordered parent time, and Russel be legally ordered to provide Kirk's monthly support gift. Kirk's generous gift to Lauren became a court-ordered coercion to Kirk, because should Kirk choose not to pay, Russel would remain incarcerated for criminal non-support. Judge Edwards echoed Waddell's belief that Kirk and Shawnee should take accountability for Russel's actions, and work *with the Waddells,* Thus Judge Edwards issued his orders in violation of state law, but in line with the religious direction of a Church 'general authority.'

Due to Edwards' support of Waddell as a general authority, and his accompanying actions, Edwards dissolved the church-state line of separation. Judge Edwards' rulings violated laws to benefit a general authority's daughter and to punish his criminal ex-son-in-law and his parents. Russel remains at risk of arrest for criminal nonsupport due to Judge Edwards' illegal rulings.

The state court proceedings continual bias and prejudice emboldens Lauren and endangers the children. To illustrate the ongoing danger to the children, on Russel's August 27, 2024 filing, Russel outlined Lauren's withholding of medical care from minor child I.A.M. in an attempt to coerce funds from Russel. In September 2024, Russel learned that in a separate incident, Lauren put his name on a medical financial agreement, and then directed the practice to collect payment from Russel for services. The practice now threatens to withhold treatment from N.R.M and I.A.M. until they receive payment from Russel. Given that Russel was imprisoned for forging signatures, Lauren's behavior is particularly painful and offensive; however this pales in comparison to the grief and stress caused to Russel's minor children. Hence, the dismissal of Russel's Complaint, especially given the emergency nature of the situation, is peculiarly abhorrent.

ISSUE 5 - CHURCH AUTONOMY DOCTRINE

The First Amendment forbids the state from substituting its judgements for the judgments of the church. Although this is commonly applied to the state imposing its will upon a church, it holds true that a state should not accept the judgments of a church in matters related to law; that the state ruled outside its statutes, according to the dictates of the Church, is a violation of Russel's constitutional rights.

Protecting the rights outlined in the First Amendment is the duty of every citizen and the responsibility of the judicial system. Should these protections be pierced, the line between church and state will be null, and influential religions or parties will unduly direct a Court in its rulings. The state would become an arm of a church.

Because "sphere sovereignty" relies upon the dual jurisdictions of church and state, this Complaint did not address the biased mistreatment Russel endured within the Church and his excommunication, but rather the bias and prejudice he faces in the state due to the undue influence of the Church. Should his Complaint be dismissed in federal Court, he is unable to achieve justice in a biased state-court.

That the state acted outside its jurisdiction by ruling outside clearly established statutes and guidelines, at the behest of a 'general authority' of a church, sets a precedent which endangers the limits so clearly set forth in the foundation of this nation.

In the founding of our country, opposition to government control of the church - and *concern about the church's control of the state* - fueled the disestablishment movement. Founders like Thomas Paine and Jefferson, and to a lesser extent Madison, advocated for separation to insulate the state from religious domination. Thomas Jefferson said "(the principles of the Constitution)

are a sure guaranty to you that (your property) will be preserved to you sacred and inviolate, and that your Institution will be permitted to govern itself according to its own voluntary rules without interference from the civil authority." The principles of the Constitution, as misused by Judge Edwards, did not preserve Kirk and Shawnee Marsh's property.

Previous to the divorce trial Russel was excommunicated from the Church; undue influence within Church proceedings is outside the jurisdiction of the state, and the bias and mistreatment the Church showed Russel should be addressed within the Church organization. If Waddell believes the Church should sanction Kirk and Shawnee Marsh for their support of Russel, those sanctions should be within his sphere of jurisdiction, the Church. As for Russel's parents, Waddell instructed Edwards to sanction Kirk and Shawnee; that Edwards ruled accordingly allowed the Church undue influence in Court and violated the jurisdiction of the state.

In the 2019 divorce trial, Bishop Waddell's interpretation of religion within the context of the divorce judgments was prevalent. In addition to discussing the doctrines of the Church, Waddell opined upon Church ordinances and procedures, and applied his view of Russel's rights within the Church. Waddell used this lens to illustrate how Russel should be treated within the Court. For example, Lauren's attorney asked Waddell "Do you think that Lauren ought to be able to get Church ordinances (for the children) without arguing over that (with Russel)?" to which Waddell replied "Absolutely."

The next day, Judge Michael Edwards awarded Lauren final say in decision making and ordered a reunification counselor's approval for Russel to exercise future parent time. This ruling was contrary to Edwards' findings of fact that "before his arrest, respondent was an involved father who was affectionate to the children and had a strong bond with them. He played with them, read

to them, and when he was not working, he assisted the petitioner with the care of the children…petitioner's feelings (of angst and anxiety) cause the children to have anxiety about these visits (with Russel)."

Russel affirms his belief in the autonomy of religious organizations to direct their own affairs, to be free to rule in accordance with laws and procedures within their organizations, but that autonomy cannot exceed the Church's jurisdiction.

The Church of Jesus Christ of Latter-Day Saints itself espouses belief in church-state separation, as evidenced by their defense in multiple current lawsuits. In *Gaddy v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints,* Church attorneys argue "Any trial seeking to adjudicate such religious issues makes a mockery of both the court and religion."

That Bishop Waddell adjudicated religious issues for personal gain in state-court is contrary to the arguments of the Church, and seems to question the Church's values, particularly given the importance of church autonomy doctrine in the Church's defense against the various lawsuits.

If this Court dismisses this Complaint, the line of separation between church and state will be dissolved; any religious leader with influence over a judge can then direct rulings, and a judge of the state (with accompanying judicial immunity) can then enforce the will of a church against a defendant.

ISSUE 6 - INDEPENDENT CLAIMS

In her order, the district Court states "*Plaintiff does not plausibly allege claims that are independent of the merits of the state-court judgments Plaintiff seeks to invalidate."*

As such, *all* claims alleged by Plaintiff become the responsibility of the state.

Kirk and Shawnee Marsh's brief to join the Complaint was not addressed. There are two interpretations of this. First, the district Court's ignoring of the brief was an oversight. In this case, Russel asks this Court to correct this oversight by adding Kirk and Shawnee, and federal subject-matter jurisdiction must apply, as evidenced by Issue 2 above. Thus the Complaint would be incorrectly dismissed.

Alternatively, as the distinct Court ruled that Kirk and Shawnee Marsh are 'inextricably intertwined' with the Complaint, the district Court must have first enjoined Kirk and Shawnee to the Complaint in order to dismiss it against them. The district Court cited lack of subject-matter jurisdiction as the justification for dismissal - this *cannot* be the case against Kirk and Shawnee, as evidenced by Issue 2 above. The Complaint was incorrectly dismissed.

By dismissing the Complaint in its entirety, the district Court acknowledged Defendant Edwards' lack of judicial immunity in the Complaint, as described in Issue 2. As a matter of law, the district Court ruled the violations against Kirk and Shawnee Marsh are 'inextricably intertwined' with the case. Judge Edwards had no jurisdiction over Kirk and Shawnee Marsh in the state court proceedings, therefore ***cannot*** have judicial immunity, as he issued a ruling over parties in which he is in clear absence of jurisdiction. As all claims are inextricably intertwined, Judge Edwards cannot have judicial immunity in any of the claims.

The District Court dismissed the Complaint against reunification counselor Dana Emmons, despite Defendants Utah and Edwards specifically declining to defend her, and Emmons herself not responding to the Complaint at all, therefore providing no defense. The district Court ruled that Emmons' actions are 'inextricably intertwined' with the actions of Utah and Edwards.

Thus, the district Court's ruling that all claims (including Dana's actions of medical malpractice, libel, collusion, and others, as outlined in the initial Complaint) are dependent on the state-court judgment, enjoined Dana Emmons to defendants State of Utah and Michael Edwards.

By dismissing claims against Dana Emmons as dependent upon the merits of the state-court, and thereby dismissing Emmons' bad actions (which resulted in constitutional violations against Russel), the district Court had to rule Dana Emmons a state actor.

As Dana Emmons functioned as a state actor, Defendant State Of Utah is liable for damages incurred by her actions. Should the State Of Utah be found immune under Eleventh Amendment Immunity, the egregious, unconstitutional actions of Emmons and Edwards are the responsibility of the State, as both Edwards and Emmons are state actors for Fourteenth Amendment purposes.

ISSUE 7 - YOUNGER ABSTENTIONISM

In their May 20, 2024 filing, Defendants acknowledge *Rooker-Feldman* doctrine cannot be invoked, by instead arguing "The Younger Abstention factors are present here…. Marsh asserts that he has filed a petition to modify the child support order in the Utah State Court and the Utah State Court has yet to issue a ruling on this petition….This state court proceeding affords adequate opportunity to raise the issues Marsh brings. Marsh is concerned about the amount of support he has been ordered to pay - a petition to modify the child support order would address these concerns and is an appropriate avenue by which to remedy these concerns…. The state proceedings would also provide vehicles for Marsh's constitutional claims to be heard… Accordingly, the Court should *abstain* and dismiss this case."[22]

[22] Reply Supporting Defendants Judge Edwards and the State of Utah's Motion to Dismiss, 5/20/2024, p. 6

The district Court followed the Defendant's initial filing in invoking *Rooker-Feldman*, despite Defendant's later withdrawal of the *Rooker-Feldman* defense. The district Court ruled without giving sufficient attention and understanding to subsequent filings of both parties. The district Court failed to consider Russel's arguments against both *Rooker-Feldman* and *Younger Abstentionism.*

As per Russel's filing dated May 21, 2024, Defendants failed to meet all three requirements to invoke *Younger Abstentionism* - (1) although Defendants quashed Russel's state motion, they used it to avoid federal litigation, (2) constitutional and federal violations have exclusive federal jurisdiction, and (3) state court proceedings do not give adequate opportunity to raise the constitutional issue - as evidenced by the state's illegal dismissal of the state-court action.[23]

Defendant's State of Utah and Judge Michael Edwards argued that the state is the appropriate venue for litigation. Defendants then worked in tandem: Utah submitted the defense to the federal district Court in an attempt to invoke *Younger Abstentionism,* which would send the case to state-court. Edwards then illegally dismissed the case in state-court. Thus, Defendants invoking *Younger Abstentionism* effectively severed Russel's opportunity to litigate his claims.

The State of Utah's actions reinforced their waiver of Eleventh Amendment Immunity. Should this Court dismiss this Appeal, Russel's right to due process will have been violated in state-court, federal court, and the appellate court.

ISSUE 8 - EXCLUSIVE FEDERAL JURISDICTION

As the district Court ordered the facts of this case are 'inextricably intertwined,' the Complaint must remain in federal Court, as federal Court has exclusive federal jurisdiction to some of the

[23] Russel's Response to Defendant's Reply dated 5/21/2024, p.6-7

claims raised, as defined by Article III, Section 2 of the United States Constitution. In an intertwined case, which contains claims solely under federal jurisdiction, the state-court then lacks jurisdiction. By dismissing the Complaint, the district Court left no venue for which Russel to seek justice.

One such a claim over which the federal system has Exclusive Jurisdiction, is 28 USC § 1332 - Diversity of Citizenship. Defendants State of Utah, Michael Edwards, and Dana Emmons are residents of Utah. Russel Marsh, Kirk Marsh and Shawnee Marsh are all residents of Virginia, and have never been residents of Utah. Although Russel submitted to Utah's jurisdiction in the divorce proceedings, Kirk and Shawnee Marsh did not. The dollar amount in question exceeds $75,000. Kirk and Shawnee lack standing in state-court to seek justice. Constitutional violations by Dana Emmons against Russel occurred when Russel was in Virginia and Emmons was in Utah. Thus the federal court must have subject-matter jurisdiction.

Exclusive Jurisdiction in the district Court also exists because Criminal Nonsupport is a federal question via 18 USC § 228, as it is a law defined and punished by federal statute. As for venue, 18 USC § 228(e)(2) states "an action may be inquired of and prosecuted in a district court of the United States for the district in which the obliger resided during a period described in paragraph (1 - period that an obliger failed to meet that support obligation)." Russel is a resident of the Fourth District, and has been a resident of the Fourth District for the whole of the state-court proceedings.

The Department of Justice explains federal action concerning Criminal Non-support: " For one, an individual is subject to federal prosecution if he or she willfully fails to pay child support that has been ordered by a court for a child who lives in another state, or if the payment is past due

for longer than 1 year or exceeds the amount of $5,000. A violation of this law is a criminal misdemeanor, and convicted offenders face fines and up to 6 months in prison (See 18 U.S.C. § 228(a)(1)). If, under the same circumstances, the child support payment is overdue for longer than 2 years, or the amount exceeds $10,000, the violation is a criminal felony, and convicted offenders face fines and up to 2 years in prison (See 18 U.S.C.§ 228(a)(3)). Notably, other than in the specific circumstances aforementioned, child support enforcement issues are handled by state and local authorities, and not by the federal government. Furthermore, all child support enforcement matters must be addressed at the local or state level before concerns can be raised at the federal level."[24]

Russel reminds this Court his arrearage accrued while he lived out-of-state from his children, the arrearage exceeds $10,000, and the state-court refuses to address his support obligations and arrearage. The facts justify and necessitate federal action in correcting the state's unconstitutional misuse of a federal statute.

The federal court has Exclusive Federal Jurisdiction over matters of Constitutional law. Russel claims 14th Amendment violations of due process, resulting in the loss of his freedom. Kirk and Shawnee claim 4th Amendment violations of their property, as well as violations of equal protection of the law. The violations against Kirk and Shawnee were further incurred as Kirk and Shawnee were violated by the state-court while outside the state-court's jurisdiction. Thus, the Complaint must be a matter of federal jurisdiction.

Plaintiffs claim violations of the 4th 11th and 14th Amendments.

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[24] https://www.justice.gov/criminal/criminal-ceos/citizens-guide-us-federal-law-child-support-enforcement

Additionally, questions of church-state separation would be a matter exclusive to federal interpretation, particularly given the state of Utah is under the bias and influence of the Church.

As the Complaint contains multiple federal questions, and district Court has ruled *all* Russel's claims are 'inextricably intertwined,' the Complaint *must* be litigated in federal court; the state-court lacks subject-matter jurisdiction

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RELIEF REQUESTED

Russel requests for this Court to expedite its decision via Federal Rules of Appellate Procedure Rule 8(a)(2)(d) to halt impending unlawful imprisonment for federal criminal nonsupport via 18 USC § 228.

Russel requests this Court grants habeas corpus relief via emergency prospective injunction of the Utah state-court rulings of August 16, 2019.

Russel requests this Court grant an official ruling to amend the initial Complaint by adding Kirk and Shawnee Marsh as Plaintiffs with Kirk Russel Marsh.

Russel requests this Court overturn the District Court's dismissal of his Complaint as the federal court has exclusive federal jurisdiction, and direct the case back to the Fourth District to hastily proceed to discovery and federal trial for damages.

Russel requests the federal court rule personal jurisdiction in the Fourth District over Dana Emmons, as a state actor for 14th Amendment purposes and a private person for sovereign immunity purposes.

Russel requests the federal court rule personal jurisdiction in the Fourth District over Michael Edwards, as a state actor for 14th Amendment purposes and a private person for sovereign immunity purposes.

Russel requests this Court rule that Judge Edwards is not entitled to absolute judicial immunity.

Russel requests this Court rule that The State of Utah has waived Eleventh Amendment Immunity.

Russel requests this Court rule that Russel did not fail to state a claim. By her ruling "*Plaintiff does not plausibly allege claims that are independent of the merits of the state-court judgments Plaintiff seeks to invalidate"* the district Court seems to acknowledge (and dismiss) valid claims.

PRIOR APPEAL

On December 9, 2019 the United State Court of Appeals for the Fourth Circuit Court ruled upon Russel's appeal of a Rule 32(j) violation in the sentencing of Russel's criminal case (see *United States of America v. Kirk Russel Marsh* No. 18-4609).

The Court ruled the "Motion to dismiss appeal granted by published opinion. Judge Harris wrote the opinion, in which Judge Thacker joined. Chief Judge Gregory wrote an opinion concurring in part, dissenting in part, and dissenting in the judgment."

The Court ordered "Marsh may seek to remedy the district court's error in collateral proceedings. Accordingly, we grant the government's motion to dismiss Marsh's appeal."

The Court found "if Marsh seeks habeas relief based on the district court's Rule 32(j) error, and the government cannot show that Marsh had independent knowledge of his limited right to appeal his sentence, then Marsh would be entitled to relief in the form of a vacatur of his sentence and entry of a new judgment "from which an appeal can be taken." *Peak*, 992 F.2d at 42."